

WORKPOINT A/S  
Esbjerg Brygge 28  
6700 Esbjerg

Workpoint365.dk  
Workpoint365.com

Phone: +45 7611 0110  
Mail: sales@workpoint.dk  
CVR: DK26082668

Esbjerg – Copenhagen

# END USER LICENSE AGREEMENT

WORKPOINT 365

## SECTION I – GENERAL TERMS

### 1 GENERAL

- 1.1 This end user license agreement (“EULA”) is entered into between WorkPoint (a Danish company registered under the business registration number 26082668) and the end user (“Customer”). WorkPoint and Customer shall jointly be referred to as “Parties” and separately as a “Party”.
- 1.2 The EULA shall apply to Customer’s use of the Services, incl. the software “WorkPoint 365” and any other software developed, marketed or otherwise distributed by WorkPoint, irrespectively of whether Customer has purchased a license to the Services directly from WorkPoint or another vendor (the “Services”).
- 1.3 This EULA constitute an appendix to an agreement entered into between Customer and on the other side WorkPoint or a Partner, including any subsequent license order forms (the “Agreement”).
- 1.4 By using the Services, Customer agrees to be bound by this EULA. If Customer does not accept and/or comply with this EULA, Customer is not entitled to use the Services.
- 1.5 WorkPoint may amend this EULA at any time subject to a notice of 30 days, including without limitation by posting revised terms and conditions on the website [www.workpoint.dk](http://www.workpoint.dk) (“Website”).

### 2 THE SERVICES AND SOFTWARE

- 2.1 The Services, incl. the software comprised by the Services, is standard software and is provided “as is”. The Services are developed and owned by WorkPoint and is a standard software solution with the primary focus on case management and document management solutions and such related services.

### 3 THE LICENSE

- 3.1 Subject to payment of the License Fee cf. Clause 6, Customer and Customer’s Affiliates are granted a time limited, non-exclusive, non-transferable right to use the Services from the tenants as defined in the Agreement, including any upgrades, versions, releases, maintenance, development services, updates etc. as delivered by WorkPoint in the license period set out in the Agreement (“License”). For the purpose of this EULA “Affiliates” means any legal entity that the Customer owns, that owns the Customer, or that is under its common ownership. “Ownership” or “own” means, for purposes of this definition, control of 50% or more interest in an entity.
- 3.2 Customer may use the Services only for the purpose of Customer’s internal business purposes.

3.3 Customer shall not reverse engineer, disassemble or decompile the Services or any software comprised by the Services, except where and only to the extent that such operations are permitted according to the applicable mandatory, statutory legislation and Customer shall comply with the legislation in all respects.

3.4 Customer shall not be entitled to sell, lease, lend, permit the use of or in any other way assign or pass on the right of use of the Services to any third-party, unless otherwise set out in this EULA, or a specific grant of license to external users is agreed upon and set out in the Agreement. External users must comply with this EULA and Customer is liable for any External users use of Service. Internal invoicing for use of the Services between Customer and Affiliates can take place and shall be of no concern of WorkPoint.

3.5 Customer shall not break or change any codes. Nor shall Customer change or remove any marks and/or notices concerning copyright, trademarks or other rights, or references hereto stated in the Services or on the medium upon which the Services may have been delivered.

3.6 In the event that Customer uses the Services contrary to the terms of this EULA, WorkPoint may terminate the License for material breach immediately and without notice.

#### **4 LICENSE METRIC**

4.1 The License is granted for the tenants as set out in the Agreement and for a specified number of users of the Customer (including Affiliates of the Customer) set out in the Agreement and for which Customer has paid the applicable License Fee, cf. Clause 6.

4.2 Notwithstanding any organizational ties in terms of employment, affiliation, or other-

wise Customer must purchase a license for each individual tenant from where access to the Services is obtained directly or indirectly. The number of users must be set out in the Agreement.

#### **5 UPGRADES**

5.1 The Services may at the sole discretion of WorkPoint be subject to upgrades from time to time, including by addition of new versions, updates and features etc. Such updates may be subject to planned downtime and occur without notice. However, WorkPoint will use reasonable efforts to notify Customer in advance. Any planned downtime is to the extent possible placed in weekends or outside normal business hours.

#### **6 LICENSE FEE AND PAYMENTS**

6.1 Customer's permitted use of the Services are subject to payment of a fee calculated in accordance with the Agreement (the "License Fee").

6.2 Invoicing and payment of the License Fee shall be made in accordance with the Agreement.

#### **7 INTELLECTUAL PROPERTY RIGHTS**

7.1 Customer recognizes that WorkPoint holds any and all copyrights and other intellectual property or industry rights in and to the Services, including but not limited to the code to the software. This also applies to any changes, adjustments, upgrades etc. to the software. Customer shall respect WorkPoint's intellectual property rights and Customer shall be responsible for any breach of such rights, including unauthorized access of the software by a third-party having got access to the Service through Customer or matters related to Customer.

#### **8 WARRANTIES**

8.1 WorkPoint warrants that the Services will substantially conform to published specifications and to the original documentation provided by WorkPoint, and that all material functions will perform, provided that the Services are used for its purposes, in accordance with the specifications, and on the computer hardware and with the operating system for which it was designed;

8.2 No reseller, consultant or any third party is authorized to make any representation or warranty to Customer regarding the Services.

8.3 THE FOREGOING ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY WORKPOINT. WORKPOINT MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED BY WORKPOINT.

## **9 LIMITATION OF LIABILITY**

9.1 WorkPoint's liabilities do not include (a) defects occurring as a result of installation, remedy or development performed by other than WorkPoint or as a result of Customer's use of the Services in conjunction with third-party accessories/software that directly or indirectly affect the functionality of the Services, (b) errors occurring as a result of alterations to or interference with the Services not carried out in accordance with WorkPoint's written instructions or acceptance, (c) errors occurring as a result of Customer's lack of training, as a result of the use of the Services in any other way than set out in the provided documentation, in accordance with good IT practice or due to Customer's negligence, its staff or any third-party and (d) failure to meet requirements or requests for functionality not expressly and clearly specified in the Agreement.

9.2 In no event and no matter the circumstances shall WorkPoint be liable for any loss of anticipated profit, loss of data, damage to records or data or any indirect, special, incidental or consequential damages or loss (including the loss of goodwill, or loss as a consequence of any kind of business interruption) arising out of or in connection with the Agreement, performance of the Services and the results connected thereto.

9.3 WorkPoint's aggregate liability in respect of any matters arising out of or in connection with the Services and this EULA, incl. with regard to art. 82(5) of the general data protection regulation, shall be limited to an amount corresponding all payments made under the Agreement for the period of six (6) months prior to the event(s) having given rise to the claim (the 'Liability Cap'). The Liability Cap shall in all circumstances be limited to a maximum of DKK 200,000.

9.4 WorkPoint assumes product liability in accordance with applicable mandatory legislation. Beyond this, WorkPoint assumes no product liability.

9.5 WorkPoint's liability in relation to third-party equipment/software only includes receipt of Customer's defect report and notifying the manufacturer or the manufacturer's local representative of the defect without undue delay. WorkPoint assumes no further liability in this respect.

## **10 INFRINGEMENT OF THIRD PARTY RIGHTS**

10.1 If a third party objects to Customer's use of the Services based on the claim that the use infringes such third party's intellectual property right (hereinafter referred to as "Infringement Claim"), WorkPoint will, subject to i) - iii) below, indemnify, defend and hold Customer harmless from and against any liabilities or damages incurred by Customer in

10.3 In the event of an Infringement Claim, Work-Point shall be entitled to either: 1) obtain the continued right for the Customer to use the Services, 2) bring the infringement to an end by modifying the Services or replacing the Services with other software which, essentially, possesses the same functions as the affected Services, or 3) conduct the defence to the Infringement Claim, including to con-

10.4 The limited warranty stated in Clause 10.1 and 10.2 is void if the Infringement Claim has resulted from accident, abuse or misapplication. Any modification of the Services by anyone other than WorkPoint voids the foregoing warranty on any portion of the Services modified or affected by such modification.

12      **AUDIT AND INFORMATION**

12.1 WorkPoint shall have the right to verify Customer's compliance with the EULA at any time and without notification. Such verification may be in the form of accessing the Services and records contained therein, including electronically. Customer shall provide WorkPoint with reasonable assistance in its verification efforts.

12.2 Without prejudice to any other remedies available to WorkPoint, if Customer is not correctly licensed, WorkPoint shall be entitled to demand payment of the additional License Fee for the period Customer has not been correctly licensed.

12.3 Neither Party shall be responsible for the other Party's costs associated with this Clause 12. Notwithstanding the foregoing, Customer shall be liable for costs incurred by WorkPoint, if Customer is not in compliance with the Agreement.

## **13 SYSTEM REQUIREMENTS**

13.1 Customer is aware and acknowledge that the Services may require and be subject to system requirements and/or a software subscription e.g. Office 365. Such requirements are set out in the Agreement or the documentation. Customer shall be responsible for fulfilling such system requirements and pay any related costs and fees. WorkPoint does not represent or warrant that the software is compatible with future versions of any third-party software.

## **14 VALIDITY AND SEVERABILITY**

14.1 If any provision of this EULA is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such provision shall not affect the legality and validity of the other provisions.

## **15 GOVERNING LAW AND JURISDICTION**

15.1 This EULA is governed by and construed in accordance with Danish law except for a) rules leading to the application of other law than Danish law and b) the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2 Any dispute controversy or claim arising out of or related to this EULA shall be settled by a competent court at WorkPoint's venue in Denmark.

## **SECTION II – PERSONAL DATA**

### **16 BACKGROUND AND PURPOSE**

16.1 WorkPoint processes personal data on behalf of Customer as part of the performance of the Services. Accordingly, the parties have agreed on the terms set out in Section II in this EULA which constitute an integrated part of the parties' agreement(s) concerning the Services. In case of conflict between any agreement between the Parties and Section II in this EULA, Section II shall take precedence.

16.2 To the extent that the applicable data protection regulation entails a need to adjust the Section II in this EULA, the parties agree that the content of Section II in this EULA shall be renegotiated between the Parties.

### **17 SCOPE**

17.1 WorkPoint is authorized and instructed to process personal data on behalf of the Customer as part of the performance of the Services on the terms and conditions set out in this EULA.

17.2 The Processor is instructed only to process personal data pursuant to Section II in this EULA on behalf of Customer to the extent the processing is necessary for delivering the Services.

17.3 WorkPoint is not allowed to process the personal data for its own purposes.

17.4 Unless otherwise set out in the Agreement, to Section II in this EULA, WorkPoint will process ordinary categories of personal data. This includes all personal data the Customer provides to WorkPoint, e.g. contact info, address, e-mail, phone numbers and such other customer data and/or supplier data. No special or sensitive categories of personal data is processed, unless specifically instructed by the Customer.

17.5 Unless WorkPoint receives instructions from the Customer allowing WorkPoint to process special or sensitive categories of personal data, if WorkPoint becomes aware that special/sensitive categories of personal data have been provided to WorkPoint, such personal data will be deleted instantly and without prior notice to the Customer.

17.6 Unless otherwise set out in this EULA WorkPoint will process personal data pertaining to all categories of data subjects on behalf of Customer incl. employees, clients, members and customer as well as supplier contacts which may also include children, to extent such data is provided by Customer.

17.7 WorkPoint may only process the personal data on the terms and conditions of Customer's instructions unless processing is otherwise required under EU law or national law applicable to WorkPoint. In this event, WorkPoint shall notify Customer of the legal requirement before processing is carried out unless such notification would be in contravention to the law in question.

## 18 DURATION

18.1 Section II in this EULA shall be effective for the duration of the provision of the Services and shall terminate automatically when

WorkPoint no longer processes personal data on behalf of Customer as part of the Services.

18.2 Upon termination of the EULA, WorkPoint shall return to Customer all personal data (if Customer does not already have such data) and shall delete any existing copies unless EU law or national law requires WorkPoint to store the personal data

## 19 CUSTOMER'S OBLIGATIONS

19.1 Customer is responsible for complying with applicable data protection law, as a data controller, in relation to the personal data processed by WorkPoint on behalf of Customer.

19.2 Customer's responsibility includes in particular the following, the compliance with which is warranted by Customer:

- Customer has the necessary legal basis to process, and to permit WorkPoint to process, the personal data processed as part of the performance of the Services.
- The specification of personal data in Clause 17 of EULA is exhaustive and no other personal data is being processed as part of the performance of the Services.
- The instructions given are legal and sufficient for WorkPoint to fulfill its obligations.

## 20 WORKPOINT'S OBLIGATIONS

### 20.1 Security measures

20.1.1 WorkPoint shall initiate and implement appropriate technical and organizational measures to achieve a security level that matches the risks involved in the processing

	activities carried out by WorkPoint for Customer.		Point shall assist Customer by appropriate technical and organizational measures, with the fulfilment of Customer's obligation to respond to requests for exercising the data subjects' rights as set out in the applicable legislation on the processing of personal data.
20.1.2	The technical and organizational measures shall be determined, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity to the rights and freedoms of natural persons.	20.4.2	At Customer's request and taking into account the nature of the processing and the information available to WorkPoint, WorkPoint shall also assist Customer with ensuring compliance with Customer's obligations to:
20.1.3	WorkPoint shall ensure that persons authorized to process Customer's personal data have committed themselves to confidentiality or are subject to an appropriate statutory obligation of confidentiality.		<ul style="list-style-type: none"> <li>a) implement appropriate technical and organizational measures;</li> <li>b) notify the supervisory authorities of personal data breaches;</li> <li>c) communicate a personal data breach to data subjects;</li> <li>d) carry out data protection impact assessments; and</li> <li>e) perform prior consultations of the supervisory authority.</li> </ul>
20.2	<b>Documentation for compliance with WorkPoint's obligations</b>		
20.2.1	WorkPoint shall make available to the Customer all information required to demonstrate compliance with the requirements of the Section II in this EULA. WorkPoint shall give access and contribute to audits, including inspections, conducted by Customer or another auditor authorized by Customer. This Clause can also be fulfilled by WorkPoint's submission of an audit report.		
20.2.2	WorkPoint shall notify Customer immediately if, in WorkPoint's view, an instruction to make information available or give access to audits or inspections is contrary to applicable Danish law or data protection provisions in other EU law or national law.		
20.3	<b>Notification of personal data breaches</b>	21	<b>COMPENSATION</b>
20.3.1	WorkPoint shall notify Customer without undue delay after becoming aware of a personal data breach.	21.1	WorkPoint is entitled to receive payment for time spent as well as other direct costs incurred by WorkPoint relating to assistance and services provided by WorkPoint at the request of Customer. Such assistance and services may include but is not limited to assistance with reporting a security breach, provision of data to data subjects, audits, cooperation with supervisory authorities and assistance for compliance with request from data subjects.
20.4	<b>Assistance to Customer</b>	21.2	WorkPoint is entitled to receive payment for time spent as well as other direct costs incurred by WorkPoint relating to changes in Customer's circumstances or the instruc-
20.4.1	At Customer's request and taking into account the nature of the processing, Work-		

- tions. The costs may include but is not limited to changes as a result of new risk assessments and impact assessments as well as changes necessitated due to Customer is being subject to law other than Danish law.
- 21.3 The compensation is calculated in accordance with the agreed hourly rate in the EULA regarding delivery of the Service. Where no agreement regarding hourly rate has been made, the compensation is calculated in accordance with WorkPoint's generally applied hourly rates.
- 21.4 Notwithstanding anything to the contrary in this Clause 21.4, a party does not have the right to claim compensation for assistance or implementation of changes to the extent where such assistance or changes are a direct consequence of the party's own breach of Section II in this EULA.
- 22 USE OF ANOTHER PROCESSOR**
- 22.1 WorkPoint is authorized to use another data processor (a sub-processor) without Customer's specific prior approval.
- 22.2 An updated list of sub-processors can be found either on WorkPoint's website, in the EULA or it can be provided by request to the e-mail address [info@workpoint.dk](mailto:info@workpoint.dk). Further, any updates to the sub-processors will be notified to Customer, e.g. via e-mail, newsletters, system notification etc. Customer may object against the addition or substitution of a sub-processor to the extent Customer has a reasonable basis for such objection.
- 22.3 Where WorkPoint engages a sub-processor, the same data protection obligations as set out in Section II in this EULA shall be imposed on that other sub-processor by way of a contract, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the general data protection regulation. Notwithstanding the foregoing, Customer accepts that the processing of data by the sub-processor may be subject to the standard terms and conditions that applies to such sub-processor, provided that Customer is informed hereof. Such information regarding the sub-processors can be found on WorkPoint's website or otherwise be provided to Customer.
- 22.4 WorkPoint is fully liable to Customer for the performance of the sub-processor's obligations as if performed by the Data Processor itself.
- 23 DATA EXPORT**
- 23.1 WorkPoint will seek to keep all personal data within the European Union or EEA; it is not the intention of WorkPoint to export data. However, Customer accepts that WorkPoint may transfer personal data to a country outside the European Union or EEA – provided that WorkPoint, prior to the transfer, has secured the necessary lawful basis for such transfer - or that Customer has instructed WorkPoint to do so, in which case Customer is responsible for securing the necessary lawful basis.
- 23.2 If Customer under the employed transfer basis is required to be a direct contractual party to an agreement, e.g. the EU Commission's model contracts for the transfer of personal data to third countries, WorkPoint shall be authorized to conclude such agreement on behalf of Customer. The content of Section II in this EULA shall not be deemed to change the content of such transfer basis, incl. the EU Commission's model contracts.



**Version 2.1 February 2020**

#### Appendix 1 – Data sub-processor

<p>Microsoft West Europe or North Europe</p>	<p>The sub-processor's processing activities take place based on the sub-processor's general terms for processing of personal data available at any time.</p> <p>In the case of conflict between WorkPoint's and the sub-processor's terms for processing of personal data, the sub-processor's terms shall take precedence in relation to the processing activities performed by the sub-processor.</p> <p>Current sub-processor terms are available here: <a href="https://servicetrust.microsoft.com/DocumentPage/3a94127b-730e-42aa-a76d-40c97246da91">https://servicetrust.microsoft.com/DocumentPage/3a94127b-730e-42aa-a76d-40c97246da91</a></p>
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